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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/592,284	06/12/2000	FRANCOIS SMOLAREK	106498	5209
25944	7590	05/13/2004	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			HECKENBERG JR, DONALD H	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

<b>Office Action Summary</b>	<b>Application No.</b> 09/592,284	<b>Applicant(s)</b> SMOLAREK, FRANCOIS	
	<b>Examiner</b> Donald Heckenberg	<b>Art Unit</b> 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-11,13-22,24-33,35-44,46-55,57-76,78-87 and 89-119 is/are pending in the application.  
 4a) Of the above claim(s) 87,89-98,116 and 117 is/are withdrawn from consideration.  
 5) ☒ Claim(s) 80-81 and 101 is/are allowed.  
 6) ☒ Claim(s) 1,3-11,13-22,24-33,35-44,46-55,57-76, 78-79, 82-86, 99-115, 118, and 119 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☒ All    b) ☐ Some \*    c) ☐ None of:  
 1. ☒ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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1. Claims 87, 89-98 and 116-117 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected process, there being no allowable generic or linking claim.

In arguing that the restriction requirement should be withdrawn, Applicant asserts that claims 87, 89-98 and 116-117 must be rejoined as set forth in MPEP § 821.04. However, rejoinder, as defined in MPEP § 821.04, applies between product and process claims- that is claims toward a product, and claims towards a process of making the product. In the instant case, the two groups of claims include product and an apparatus, not a process of making the product. Nothing in MPEP § 821.04 mandates the rejoinder of process and apparatus claims.

Applicant further asserts that there is no serious burden in searching the claims together. This has been argued and responded to before - see the previous Office Action.

A complete reply to this final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 3-11, 13-22, 24-33, 35-44, 46-55, 57-76, 78-79, 82-86, 99-100, 102-115, and 118-119 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Independent claims 1, 11, 22, 33, 44, 55, 75, 87, and 99 recite that the claimed mold comprises recesses (or notches) with the recesses having longitudinal edges, with "the edges not touching each other over at least a major part of their length when the mold is not deformed." The specification of the instant application does not contain any reference to the edges of the recesses not touching over a major portion of their length. Figure 2 of the instant application does show the recesses (12) with edges that are not touching. However, Figure 2 only shows a single cross section, and thus does not show the recesses not touching "over at least a major portion of their length." Thus, as there is no description of the longitudinal

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edges not touching each other over a major part of their length in the originally filed disclosure, this limitation constitutes new matter.

4. Applicant's arguments with respect to the new matter rejection under 35 U.S.C. § 112, first paragraph, filed March 1, 2004 have been fully considered but they are not persuasive.

In response to the new matter rejection, Applicant notes that the inside edge shown in Fig. 1 of the instant application is not hatched, and that there is no dash on the cross-section of Fig. 2. Applicant asserts that such hatches in Fig. 1 or dashes in Fig. 2 would be present if the inside edges were touching each other between the cross-section and the bottom of the mold. Applicant thus concludes that it is clear from Figs. 1 and 2 and the disclosure in the specification that the edges of the recesses are not touching each other over at least a major portion of their length when the mold is not deformed.

Initially, it is noted that nothing in the specification of the instant application discloses the edges not touching each other over a major portion of their length. Any support for this limitation must therefore come from the figures of the instant application.

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Neither of the two figures of the instant application show the edges touching or not touching "over at least a major part of their length." Figure 1 shows two edges along their length, but neither edge is shown in relation to another edge. Figure 2 is defined as a "fragmentary cross section" (see spec. p. 3, l. 21), thus there is no suggestion that this figure show anything more than a single section where the edges do not touch, rather than a major portion of the length. As a negative limitation - that is, "not touching" - this feature must have basis in the original disclosure. The mere absence of a positive recitation is not basis for an exclusion. MPEP § 2173.05(i). Thus, in order to support this limitation the drawings would definitively have to show the edges not touch over a major portion of their length. As figure 1 does not show edges in relation to one another, and figure 2 only purports to be a "fragmentary cross section" of the edges, the drawings simply cannot be representing the edges touching over "a major portion of the their length".

Applicant's arguments about the ways dashes would have been used to show edges touching are mere speculation on the ways the drawings could have been done. They do definitive show support for this limitation being present or not. Moreover, the lack of two edges in relation to one another in figure 1, and the

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description of figure 2 as a "fragmentary cross section" suggest just the opposite of what Applicant asserts- namely that the edges touching or not was not to be shown in the drawings.

5. Claims 80-81 and 101 are allowed. See the reasons for indicating allowable subject matter in the previous Office Action.

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

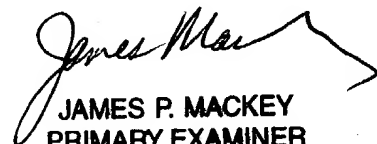
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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<<http://pair-direct.uspto.gov>>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

  
Donald Heckenberg  
May 10, 2004

  
JAMES P. MACKEY  
PRIMARY EXAMINER  
5/11/04